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c 43 Retail Business Establishments Statute Law Amendment Act, 1991/Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail

Ontario

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CHAPTER 43

An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them

Assented to November 25th, 1991

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I RETAIL BUSINESS HOLIDAYS ACT

1.—(1) Section 4 of the *Retail Business Holidays Act*, as re-enacted by the Statutes of Ontario, 1989, chapter 3, section 4, is repealed and the following substituted:

Tourism
exemption

4.—(1) Despite section 2, the council of a municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism.

Common
pause day
principle

(2) The council in passing a by-law under subsection (1) shall take into account the principle that holidays should be maintained as common pause days.

Tourism
criteria

(3) A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section.

Application
for by-law

(4) Subject to the regulations made under this section, the council shall consider a by-law under subsection (1) only on the application of one or more persons carrying on retail business in the municipality or on the application of an association, whether or not incorporated, representing persons carrying on retail business in the municipality.

Application
by local
municipality

(5) In a district, metropolitan or regional municipality and in the County of Oxford, the council of a local municipality may also apply for a by-law under subsection (1).

Public
meeting

- (6) Before passing a by-law under subsection (1), the council,
- (a) shall hold a public meeting in respect of the proposed by-law;
 - (b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least thirty days before the meeting is to be held; and
 - (c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law.

CHAPITRE 43

Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements

Sanctionnée le 25 novembre 1991

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

PARTIE I LOI SUR LES JOURS FÉRIÉS DANS LE COMMERCE DE DÉTAIL

1 (1) L'article 4 de la loi intitulée *Retail Business Holidays Act* («*Loi sur les jours fériés dans le commerce de détail*»), tel qu'il est adopté de nouveau par l'article 4 du chapitre 3 des Lois de l'Ontario de 1989, est abrogé et remplacé par ce qui suit :

Council not obligated	(7) The council is not required to pass the by-law even if the tourism criteria are met.
Commencement of by-law	(8) Subject to section 4.3, a by-law under this section comes into force on the thirty-first day after it is passed by the council.
Procedures	<p>(9) Subject to the regulations made under this section, the council may,</p> <ul style="list-style-type: none"> (a) establish procedures and fees for the processing of applications; (b) combine two or more applications; (c) hold one public meeting with respect to two or more applications; (d) limit the number of applications that will be considered in any year.
Regulations	<p>(10) The Lieutenant Governor in Council may make regulations,</p> <ul style="list-style-type: none"> (a) prescribing tourism criteria for the purposes of this section; (b) governing the procedures and fees for processing applications, the combining of applications and public meetings and limitations on the number of public meetings held by a council; (c) setting out the contents of the application; (d) requiring that a by-law that applies to a retail business establishment within such class of retail business establishments as may be set out in the regulation may be considered only on the application of the person carrying on the business.
Idem	(11) A regulation under clause (10) (a) or (d) may classify retail business establishments and may prescribe different tourism criteria for the different classes of retail business establishments.
Unorganized territory	4.1 The Lieutenant Governor in Council may by regulation permit retail business establishments in territory without municipal organization to be open on holidays.
Contents of by-laws and regulations	<p>4.2 A by-law under section 4 or a regulation under section 4.1,</p> <ul style="list-style-type: none"> (a) may apply to one or more retail business establishments or to one or more classes of retail business establishments; (b) may apply to all or any part or parts of the municipality in case of a by-law or to all or any part of a territory without municipal organization in the case of a regulation; (c) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours; (d) may permit the opening of retail business establishments on some holidays and not on others; (e) may restrict the opening of retail business establishments on holidays to specific periods of the year; (f) may classify retail business establishments.
Appeal to O.M.B.	4.3—(1) Any person who objects to a by-law made by the council of a municipality under section 4 may appeal to the Ontario Municipal Board by filing a notice of appeal with the Board setting out the objection to the by-law and the reasons in support of the objection.

Time for appeal	(2) The notice of appeal must be filed with the Board not later than thirty days after the day the by-law is passed by the council.
Dismissal without hearing	(3) The Board may, if it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing, but before doing so shall notify the appellant and afford the appellant an opportunity to make representations as to the merits of the appeal.
Powers of O.M.B.	(4) The Board may, <ol style="list-style-type: none"> dismiss the appeal; dismiss the appeal on the condition that the council amend the by-law in a manner specified by the Board; or quash the by-law.
Commencement of by-law	(5) If one or more appeals are taken under this section, the by-law shall not come into force until, <ol style="list-style-type: none"> the day all appeals have been dismissed under subsection (3) or clause (4) (a); or the day the by-law is amended in the manner specified by the Board under clause (4) (b).
Correction of errors	(6) The Board may, without a hearing, correct an error in an order or decision under this section if the error arises from an accidental slip or omission.
Ontario Municipal Board Act, ss. 42, 94	(7) Sections 42 and 94 of the <i>Ontario Municipal Board Act</i> do not apply to an appeal under this section.
Time for decision	(8) The Board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9).
Regulations	(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8).

(2) The Act is amended by adding the following section:

(2) La Loi est modifiée par adjonction de l'article suivant :

Sundays in December

4.4 Despite any other provision of this or any other Act or the by-laws or regulations under this or any other Act, a retail business may be carried on in a retail business establishment on the Sundays in December preceding Christmas Day.

(3) Subsection 6 (2) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 5, is repealed and the following substituted:

(3) Le paragraphe 6 (2) de la Loi, tel qu'il est adopté par l'article 5 du chapitre 3 des Lois de l'Ontario de 1989, est abrogé et remplacé par ce qui suit :

Transitional

(2) The following transitional rules apply to the by-laws of municipalities that were in force under this or any other Act immediately before the coming into force of subsection 1 (3) of the *Retail Business Establishments Statute Law Amendment Act, 1991* and that relate to the opening or closing of a retail business establishment on holidays:

1. By-laws in force on the 3rd day of June, 1991 continue in force until the first anniversary of that subsection coming into force or until the by-law is repealed, whichever is first.
2. By-laws that come into force on or after the 4th day of June, 1991 are repealed on the day on which that subsection comes into force.

(4) Section 7 of the Act, as re-enacted by the Statutes of Ontario, 1989, chapter 3, sec-

(4) L'article 7 de la Loi; tel qu'il est adopté de nouveau par l'article 6 du chapitre 3 des

tion 6, is amended by adding the following subsection:

Minimum
penalty

(3.1) The minimum fine for an offence under this Act, other than for a contravention of subsection 2 (2), is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence.

(5) Section 8 of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 6, is amended by adding the following subsection:

Idem

(1a) In addition to its powers under subsection (1), the Ontario Court (General Division), on the application of any interested person, may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act.

(6) Subsection 8 (2) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 6, is repealed and the following substituted:

Idem

(2) An order under subsection (1) or (1a) is in addition to any penalty that may be imposed and may be made whether or not a proceeding is commenced under the *Provincial Offences Act* for a contravention of section 2 or of a by-law or regulation under this Act.

PART II

EMPLOYMENT STANDARDS ACT

2.—(1) Part XI-B of the *Employment Standards Act*, as enacted by the Statutes of Ontario, 1988, chapter 7, section 1 and amended by 1989, chapter 4, section 2, is repealed and the following substituted:

Lois de l'Ontario de 1989, est modifié par adjonction du paragraphe suivant :

(5) L'article 8 de la Loi, tel qu'il est adopté par l'article 6 du chapitre 3 des Lois de l'Ontario de 1989, est modifié par adjonction du paragraphe suivant :

(6) Le paragraphe 8 (2) de la Loi, tel qu'il est adopté par l'article 6 du chapitre 3 des Lois de l'Ontario de 1989, est abrogé et remplacé par ce qui suit :

PARTIE II

LOI SUR LES NORMES D'EMPLOI

2 (1) La partie XI-B de la loi intitulée *Employment Standards Act* («*Loi sur les normes d'emploi*»), telle qu'elle est adoptée par l'article 1 du chapitre 7 des Lois de l'Ontario de 1988 et modifiée par l'article 2 du chapitre 4 des Lois de l'Ontario de 1989, est abrogée et remplacée par ce qui suit :

PART XI-B

RETAIL BUSINESS ESTABLISHMENTS

Application

39e.—(1) This Part applies with respect to retail business establishments as defined in subsection 1 (1) of the *Retail Business Holidays Act* to the employees and employers in those establishments and to persons acting on behalf of those employers.

Non-applica-
tion

(2) This Part does not apply with respect to retail business establishments in which the primary retail business is one,

- (a) that sells prepared meals;
- (b) that rents living accommodations;
- (c) that is open to the public for educational, recreational or amusement purposes; or
- (d) that sells goods or services incidental to a business described in clause (a), (b) or (c) and that is located in the same premises as the business.

Period of
rest

39ea. In every seven-day period, an employer shall allow each employee at least thirty-six consecutive hours of rest.

Right to
refuse work

39eb.—(1) An employee may refuse an assignment of work on a Sunday or other holiday as defined in subsection 1 (1) of the *Retail Business Holidays Act*.

Notice of
refusal

(2) An employee who accepts an assignment of work on a Sunday or other holiday may then refuse the assignment only

upon giving the employer notice at least forty-eight hours before the first hour of the work on the Sunday or holiday.

Prohibition

39ec. No employer or person acting on behalf of an employer shall dismiss, threaten to dismiss, discipline, suspend, lay off, intimidate, coerce or impose a penalty on an employee,

- (a) because the employee has refused, or attempted to refuse, an assignment of work on a Sunday or other holiday if the employee is permitted to do so under section 39eb;
- (b) because the employee seeks to enforce his or her rights under this Part; or
- (c) because the employee,
 - (i) makes representations in respect of a proposed by-law under section 4 of the *Retail Business Holidays Act* at a public meeting under that section,
 - (ii) commences or participates in an appeal to the Ontario Municipal Board of a by-law made under section 4 of the *Retail Business Holidays Act*, or
 - (iii) commences or participates in a challenge in any court to a by-law made under section 4 of the *Retail Business Holidays Act*.

Order by
E.S.O.

39f.—(1) If an employer fails to comply with section 39ea or contravenes section 39ec, an employment standards officer may order what action, if any, the employer shall take or what the employer shall refrain from doing in order to constitute compliance with the section and may make an order to reinstate or recall the employee with or without compensation or to compensate the employee in lieu of reinstatement or recall for loss of earnings or other employment benefits.

Compensa-
tion

(2) When ordering the employer to compensate the employee, the employment standards officer shall determine the amount of the compensation.

(2) Clause 57 (1) (ea) of the Act, as enacted by the Statutes of Ontario, 1988, chapter 7, section 4, is repealed and the following substituted:

(2) L'alinéa 57 (1) (ea) de la Loi, tel qu'il est adopté par l'article 4 du chapitre 7 des Lois de l'Ontario de 1988, est abrogé et remplacé par ce qui suit :

- (ea) has sought to enforce his or her rights under section 39ea;
- (eb) has exercised a right to refuse work under section 39eb.

PART III COMMENCEMENT AND SHORT TITLE

PARTIE III ENTRÉE EN VIGUEUR ET TITRE ABRÉGÉ

Commence-
ment

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

3 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

Short title

4. The short title of this Act is the *Retail Business Establishments Statute Law Amendment Act, 1991*.

4 Le titre abrégé de la présente loi est *Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail*.

Titre abrégé